

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KOLE VUSHAJ,

Petitioner,

Civil Case Number: 05-CV-74142
Crim. Case Number: 04-CR-80288

v.

HONORABLE AVERN COHN

UNITED STATES OF AMERICA,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION AND
DENYING MOTION UNDER 28 U.S.C. § 2255**

I.

This is a habeas case under 28 U.S.C. § 2255. Petitioner Kole Vushaj, a federal prisoner convicted of several counts relating to alien smuggling and serving 110 months imprisonment, claims he is incarcerated in violation of his constitutional rights. Petitioner specifically claims that his counsel was ineffective regarding his rights under the Vienna Convention on Consular Relations (VCCR). Petitioner says the government agents who arrested him failed to inform him of his VCCR rights prior to his interrogation.

The matter was referred to a magistrate judge for a report and recommendation (MJRR). The magistrate judge issued a MJRR recommending that further proceedings in this case be stayed pending the outcome of decisions by the United States Supreme Court in Sanchez-Llamas v. Oregon, 126 S.Ct. 620 (2005); Bustill v. Johnson, 126 S.Ct. 621 (2005), in which the Supreme Court was to consider (1) whether the Vienna

Convention coveys individual rights of consular notification, (2) whether the state's failure to notify a foreign detainee of his rights results in the suppression of their statements to police, and (3) whether a state may refuse to consider violations of the VCCR because of a procedural bar. Neither party filed objections to the MJRR. The Court adopted the MJRR and stayed the case. See Order Adopting Report and Recommendation and Staying Motion Under 28 U.S.C. § 2255, filed April 4, 2006.

II.

On July 24, 2007, the magistrate judge issued a Supplemental Report and Recommendation (Supplemental MJRR). In the Supplemental MJRR, the magistrate judge noted that the Supreme Court ultimately did not answer the question of the whether the Vienna Convention creates enforceable rights, and therefore Petitioner's motion must be evaluated under existing Sixth Circuit precedent set forth in United States v. Emuegbunam, 268 F.3d 377 (6th Cir. 2001). The magistrate judge then carefully explained why Petitioner is not entitled to relief based on Emuegbunam. Neither party has filed objections to the Supplemental MJRR or asked for an extension of time in which to file objections.¹

¹On July 30, 2007, Petitioner filed a petition for a writ of mandamus in the Court of Appeals for the Sixth Circuit. In re: Vushaj, No. 07-1931. The mandamus petition appeared to be based on Petitioner's belief that his motion had been pending since 2005 with no court action. According to the docket sheet, on August 14, 2007, the Sixth Circuit sent a letter to Petitioner indicating that within thirty (30) days, petitioner must either pay the filing fee of \$450.00 or file a motion to proceed without payment. To date, the docket sheet does not show that a filing fee was paid or that Petitioner requested to proceed without payment.

III.

Accordingly, the findings and conclusions of the MJRR are adopted as the findings and conclusions of the Court. Petitioner's motion under § 2255 is DENIED.
SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: September 25, 2007

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record and Kole Vushaj, #16963-112, CI Moshannon Valley, Correctional Institution, P.O. Box 2000, Philipsburg, PA 16866 on this date, September 25, 2007, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160